

Title 5. California Code of Regulations  
Division 1. State Department of Education  
Chapter 11. Special Programs  
Subchapter 19. Charter Schools

*Add Article 1.5 (commencing with Section 11963) to read:*

**Article 1.5. Classroom- and Nonclassroom-Based Instruction in Charter Schools.**

**§ 11963. Definition of Classroom-Based Instruction.**

(a) In accordance with the definition of classroom-based instruction specified in Education Code section 47612.5(e)(1), and for purposes of identifying and reporting that portion of a charter school's average daily attendance that is generated through nonclassroom-based instruction pursuant to Education Code sections 47634.2(c) and 47612.5(e)(2), classroom-based instruction in a charter school occurs only when all four of the following conditions are met.

(1) The charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils within the meaning of Education Code section 47605(l).

(2) At least 80 percent of the instructional time offered at the charter school is at the schoolsite.

(3) The charter school's schoolsite is a facility that is used principally for classroom instruction.

(4) The charter school requires its pupils to be in attendance at the schoolsite at least 80 percent of the minimum instructional time required pursuant to Education Code section 47612.5(a)(1).

(b) The requirement to be "at the schoolsite" is satisfied if either of the following conditions is met.

(1) The facility in which the pupils receive instruction is:

(A) Owned, rented, or leased by the charter school principally for classroom instruction;

(B) Provided to the charter school by a school district pursuant to Education Code section 47614 principally for classroom instruction; or

1        (C) Provided to the charter school free-of-charge principally for classroom instruction  
2 pursuant to a written agreement.

3        When not being used by the charter school for classroom instruction, the facility may be  
4 rented, leased, or allowed to be used for other purposes (e.g., for evening adult classes not  
5 offered by the charter school, local theater productions, or community meetings) and still be  
6 deemed to be principally for classroom instruction.

7        (2) The charter school facility meets the criteria in paragraph (1) and the pupils are on a  
8 field trip during which the pupils remain under the immediate supervision and control of the  
9 employee of the charter school and are carrying out an educational activity required of the pupils.

10       (c) The requirement to be “at the schoolsite” is not satisfied if the pupils are in a personal  
11 residence (i.e., a dwelling), even if space in the residence is set aside and dedicated to  
12 instructional purposes and/or the charter school rents or leases space in the residence for the  
13 provision of instruction. As used in this subdivision, a personal residence shall not include a  
14 facility that is licensed by a state or local government agency to operate as a facility in which  
15 pupils not related to the facility’s owners are provided custodial care and supervision (e.g., a  
16 licensed children’s institution or a boarding school).

17       (d) The definitions in this section are solely for the purpose of determining if a charter  
18 school must submit a determination of funding request pursuant to Education Code section  
19 47634.2.

20       NOTE: Authority cited: Sections 33031, 47612.5 and 47634.2, Education Code. Reference:  
21 Sections 47605, 47612.5, and 47634.2, Education Code.

22       **§ 11963.1. Nonclassroom-Based Instruction in Charter Schools.**

23       This article does not change the requirement that nonclassroom-based instruction in charter  
24 schools comply with the provisions of Article 5.5 (commencing with Section 51745) of Chapter  
25 5 of Part 28 of the Education Code.

26       NOTE: Authority cited: Sections 33031 and 47612.5, Education Code. Reference: Article 5.5  
27 (commencing with Section 51745) of Chapter 5 of Part 28; and Section 47612.5, Education  
28 Code.

1 **§ 11963.2. Average Daily Attendance for Nonclassroom-Based Instruction in Charter**  
2 **Schools.**

3 (a) A charter school may receive funding for nonclassroom-based instruction only if a  
4 determination of funding is made pursuant to Education Code section 47634.2. A determination  
5 of funding is a specific percentage approved by the State Board of Education for each affected  
6 charter school by which the charter school's reported nonclassroom-based average daily  
7 attendance must be adjusted by the Superintendent of Public Instruction prior to the apportioning  
8 of funds based upon that average daily attendance. A determination of funding shall only be  
9 approved by the State Board for a charter school if the charter school has submitted a request.

10 (1) For 2001-02, a determination of funding approved by the State Board of Education shall  
11 be not less than 95 percent and not more than 100 percent.

12 (2) For 2002-03, a determination of funding request approved by the State Board of  
13 Education shall be 80 percent, unless a greater or lesser percentage is determined appropriate by  
14 the State Board of Education in accordance with the provisions of Section 11963.4. In no case  
15 shall an approved determination of funding exceed 100 percent.

16 (3) For 2003-04 and each fiscal year thereafter, a determination of funding request  
17 approved by the State Board of Education shall be 70 percent, unless a greater or lesser  
18 percentage is determined appropriate by the State Board of Education in accordance with Section  
19 11963.4. In no case shall an approved determination of funding exceed 100 percent.

20 (4) Beginning with the 2002-03 fiscal year, an approved determination of funding shall be  
21 for at least one fiscal year, but shall be for not more than five fiscal years. A determination of  
22 funding shall be subject to review each time a material change is made in the school's charter  
23 with respect to non-classroom based instruction, each time the school's charter is renewed,  
24 and/or in accordance with any conditions the State Board of Education may impose at the time of  
25 the determination of funding request's approval. A material change in the school's charter with  
26 respect to nonclassroom-based instruction is any significant change that affects the level of  
27 resources devoted to nonclassroom-based instruction, the courses to be offered through  
28 nonclassroom-based instruction, and/or the delivery of educational services to pupils receiving  
29 nonclassroom-based instruction. The charter school shall notify the California Department of  
30 Education no later than thirty (30) days after the material change is made.

1 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections  
2 47634.2 and 51745.6, Education Code.

3 **§ 11963.3. Determination of Funding Request Forms and Calculations.**

4 (a) For purposes of submitting a determination of funding request, the California  
5 Department of Education shall issue a form or set of forms to collect the information specified in  
6 this subdivision. Unless otherwise indicated, charter schools submitting a determination of  
7 funding request shall complete the form or forms in accordance with the definitions used in Part  
8 II of the 2001 edition of the California School Accounting Manual (which can be obtained from  
9 the California Department of Education web site at: [www.cde.ca.gov/fiscal/sacs/csam](http://www.cde.ca.gov/fiscal/sacs/csam)). The  
10 form or forms shall be developed by the California Department of Education in consultation with  
11 the Advisory Commission on Charter Schools. The form or forms shall include all of the  
12 following and, to the extent the form or forms include more than the following, the form or  
13 forms shall require the approval of the State Board of Education and comply with applicable  
14 provisions of the Administrative Procedure Act.

15 (1) The name, charter number, address, telephone number, fax number, and email address,  
16 if any, for the charter school, and a contact person.

17 (2) The percentage requested by the school as its determination of funding.

18 (3) For 2002-03 and each fiscal year thereafter, the fiscal years for which the determination  
19 of funding is requested, which shall not exceed five years.

20 (4) The effective term of the charter.

21 (5) For charter schools that operated in the prior fiscal year, all of the following:

22 (A) The school's total resources, including all federal revenue, with federal Public Charter  
23 School Grant Program start-up, implementation, and dissemination grants separately identified;  
24 all state revenue; all local revenue with in-lieu property taxes separately identified; other  
25 financing sources; and the ending balance from the prior fiscal year.

26 (B) The school's total expenditures for instruction and related services, by object of  
27 expenditure, which shall include all of the following:

28 1. Activities dealing with the interaction between teaching staff and students, without  
29 regard to the instructional location or medium.

30 2. Services that provide administrative, technical, and logistical support to facilitate and

1 enhance instruction.

2 3. Services in direct support of students.

3 4. School-sponsored extra-curricular or co-curricular activities designed to provide  
4 motivation and enjoyment and improvement of skills.

5 (C) The school's total expenditures for schoolsite and administrative site operations and  
6 facilities, by object of expenditure, which shall include all of the following:

7 1. Activities concerned with securing and keeping open and working the physical plants,  
8 grounds, and equipment necessary for the operation of the school.

9 2. Facility rents, leases, and utilities.

10 3. Facilities acquisition and construction.

11 (D) The school's total expenditures for administration and all other activities, by object of  
12 expenditure, which shall include all of the following:

13 1. Activities concerned with establishing and administering policy for operating the entire  
14 charter school, such as the governing board, director, and administrative staff.

15 2. Other general administration activities, such as payroll and accounting services, auditing  
16 and legal services, property and liability insurance, personnel, charter-wide telephone service,  
17 and data processing services.

18 3. Supervisorial oversight fees charged by the chartering authority.

19 4. Other expenditures not reported elsewhere, such as those for community services and  
20 enterprise activities.

21 (E) Other outgo and other uses, including debt service payments and transfers.

22 (F) The excess (or deficiency) of revenues over expenditures calculated by subtracting the  
23 total of subparagraphs (B), (C), (D), and (E), from the total resources reported pursuant to  
24 subparagraph (A), and a list of the amount of reserves for: facilities acquisition or construction,  
25 economic uncertainties, the amount required by the charter-authorizing entity, or other reserves.

26 (6) For charter schools that did not operate in the prior fiscal year, the revenue and  
27 expenditure information required in paragraph (5) shall be provided using reasonable estimates  
28 of current-year annualized revenues and expenditures.

29 (b) In addition to the form or forms prescribed pursuant to subdivision (a), a complete  
30 determination of funding request shall also include the following information. Only a

1 determination of funding request that is complete may be acted upon by the State Board of  
2 Education.

3 (1) A certification of the following:

4 (A) That the information provided is true and correct to the best of the ability and  
5 knowledge of the individual authorized to do so by the charter school's governing board.

6 (B) That the charter school's nonclassroom-based instruction is conducted for and  
7 substantially dedicated to the instructional benefit of the school's students.

8 (C) That the governing board of the charter school has adopted and implements conflict of  
9 interest policies.

10 (D) That all of the charter school's transactions, contracts, and agreements are in the best  
11 interest of the school and reflect a reasonable market rate for all goods, services, and  
12 considerations rendered for or supplied to the school.

13 (2) The charter school's pupil-teacher ratio as calculated pursuant to Education Code  
14 section 51745.6; and the pupil-teacher ratio of the largest unified school district in the county or  
15 counties in which the charter school operates, as required by Section 11704.

16 (3) A listing of entities that received in the previous fiscal year (or will receive in the  
17 current fiscal year) \$50,000 or more of the charter school's total expenditures identified pursuant  
18 to subparagraphs (B), (C), (D), and (E) of paragraph (5) of subdivision (a), the amount received  
19 by each entity; whether each of the contract payments is based on specific services rendered or  
20 upon an amount per unit of average daily attendance or some other percentage; and an  
21 identification of which entities, if any, have contract payments based on a per unit average daily  
22 attendance amount or some other percentage.

23 (4) An identification of the members comprising the charter school's governing board (i.e.,  
24 parent, teacher, etc.) and a description of how those members were selected; whether the  
25 governing board has adopted and implemented conflict of interest policies and procedures; and  
26 whether any of the governing board members are affiliated in any way with any of the entities  
27 reported pursuant to paragraph (3) and if so, how.

28 (5) An explanation of all transfers reported pursuant to subparagraph (E) of paragraph (5)  
29 of subdivision (a).

30 (6) A list and the amount of each of the other reserves reported pursuant to subparagraph

1 (F) of paragraph (5) of subdivision (a).

2 (7) The total square footage of the facilities of the charter school; the square footage that is  
3 used for instruction and related services (as defined in subparagraph (B) of paragraph (5) of  
4 subdivision (a)); and the percentage of the school's nonclassroom-based pupils that use the  
5 instruction and related space and how frequently.

6 (8) The number of full-time equivalent employees who possess a valid teaching certificate,  
7 permit, or other document equivalent to that which a teacher in other public schools would be  
8 required to hold issued by the Commission on Teacher Credentialing.

9 (c) The California Department of Education shall perform the following using the resource  
10 and expenditure data provided pursuant to subdivision (a).

11 (1) A calculation showing the charter school's total expenditures for salaries and benefits  
12 for all employees who possess a valid teaching certificate, permit, or other document equivalent  
13 to that which a teacher in other public schools would be required to hold issued by the  
14 Commission on Teacher Credentialing as a percentage of the school's total public revenues. For  
15 the purposes of this subdivision:

16 (A) "Employees" shall include special education instructors who possess a valid teaching  
17 certificate, permit, or other document equivalent to that which special education teachers in non-  
18 charter public schools would be required to hold issued by the Commission on Teacher  
19 Credentialing, and who provide instruction to pupils of the charter school pursuant to a contract  
20 with a public or private entity.

21 (B) "Employees" shall include individuals who possess a valid certificate, permit, or other  
22 document equivalent to that which the individuals would be required to possess in a non-charter  
23 public school, issued by the Commission on Teacher Credentialing, and who are employed by a  
24 local education agency (LEA), provided all of the following conditions are met: the LEA is the  
25 employer of all the charter school's staff; the governing board of the LEA is the governing  
26 authority for the charter school (i.e., the charter school is not a corporate entity separate from the  
27 LEA); and the LEA's employees are assigned exclusively to work at the charter school or, to the  
28 extent that the LEA's employees are assigned to work at the charter school on a part-time basis,  
29 the charter school pays for the services rendered on a documented, fee-for-service basis and not,  
30 for example, on the basis of a fixed annual amount, fixed percentage of average daily attendance

1 revenue, or other basis that is not related to documented services actually rendered to the charter  
2 school. Under no circumstances shall certificated employees of an LEA be considered  
3 employees of a charter school for purposes of this subparagraph unless the charter school pays  
4 for the services rendered by the LEA's employees on a documented, fee-for-service basis.

5 (C) The school's total public revenue is based on the amounts reported pursuant to  
6 subparagraph (A) of paragraph (5) of subdivision (a) and equals the sum of: all federal revenue,  
7 less any Public Charter School Grant Program start-up, implementation, and dissemination grant  
8 funds; state revenue; and local revenue from in-lieu property taxes.

9 (2) A calculation showing the charter school's total expenditures on instruction and related  
10 services as a percentage of the school's total revenues. For the purposes of this subdivision, the  
11 school's total revenues does not include the ending balance from the prior fiscal year.

12 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections  
13 47634.2 and 51745.6, Education Code.

14 **§ 11963.4. Evaluation of Determination of Funding Requests Regarding Nonclassroom-**  
15 **Based Instruction.**

16 When a complete determination of funding request is received from a charter school, it  
17 shall be reviewed by the California Department of Education and presented to the Advisory  
18 Commission on Charter Schools, along with credible information pertaining to the request  
19 obtained from any other source. The Advisory Commission shall develop a recommendation  
20 pursuant to this section to the State Board of Education regarding the request, and that  
21 recommendation shall be presented to the State Board of Education by the California Department  
22 of Education. The following criteria shall guide the process of reviewing and developing a  
23 recommendation on the request. The California Department of Education shall report any  
24 difference of opinion between the California Department of Education and the Advisory  
25 Commission as to the recommendation presented to the State Board of Education.

26 (a) For the 2002-03 fiscal year:

27 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
28 11963.3 equals at least 35 percent but less than 50 percent, and the percentage calculated  
29 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals or exceeds 55 percent, the  
30 Advisory Commission on Charter Schools shall recommend to the State Board of Education



1 approval of the request at 80 percent, unless there is a reasonable basis to recommend otherwise.  
2 If the recommended percentage is lower than the requested percentage, the recommendation to  
3 the State Board shall include the reasons justifying the reduction, and, if appropriate, describe  
4 how any deficiencies or problems may be addressed by the charter school.

5 (2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
6 11963.3 equals or exceeds 50 percent, the Advisory Commission on Charter Schools shall  
7 recommend to the State Board of Education approval of the request at 100 percent (i.e., full  
8 funding), unless there is a reasonable basis to recommend otherwise. The recommendation to the  
9 State Board shall include the reasons justifying a percentage that is greater than 80 percent and,  
10 if the recommended percentage is lower than the requested percentage, the reasons justifying the  
11 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by  
12 the charter school.

13 (3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
14 11963.3 is less than 35 percent, or the percentage calculated pursuant to paragraph (2) of  
15 subdivision (c) of Section 11963.3 is less than 55 percent, the charter school's nonclassroom-  
16 based instruction is not substantially dedicated to the instructional benefit of the students, and the  
17 Advisory Commission on Charter Schools shall recommend to the State Board of Education  
18 approval of the request at 70 percent, unless there is a reasonable basis to recommend otherwise.  
19 The recommendation to the State Board shall include the reasons justifying a percentage that is  
20 lower than 80 percent and, if the recommended percentage is lower than the requested  
21 percentage, the reasons for the reduction and, if appropriate, describe how any deficiencies or  
22 problems may be addressed by the charter school.

23 (b) For the 2003-04 fiscal year and each fiscal year thereafter:

24 (1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
25 11963.3 equals at least 40 percent but less than 50 percent, and the percentage calculated  
26 pursuant to paragraph (2) of subdivision (c) of Section 11963.3 equals at least 60 percent but less  
27 than 70 percent, the Advisory Commission on Charter Schools shall recommend to the State  
28 Board of Education approval of the request at 70 percent, unless there is a reasonable basis to  
29 recommend otherwise. If the recommended percentage is lower than the requested percentage,

1 the recommendation to the State Board shall include the reasons justifying the reduction and, if  
2 appropriate, describe how any deficiencies or problems may be addressed by the charter school.

3 (2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
4 11963.3 equals or exceeds 50 percent, and the percentage calculated pursuant to paragraph (2) of  
5 subdivision (c) equals at least 70 percent but less than 80 percent, the Advisory Commission on  
6 Charter Schools shall recommend to the State Board of Education approval of the request at 85  
7 percent, unless there is a reasonable basis to recommend otherwise. The recommendation to the  
8 State Board shall include the reasons justifying a percentage that is greater than 70 percent and,  
9 if the recommended percentage is lower than the requested percentage, the reasons justifying the  
10 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by  
11 the charter school.

12 (3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
13 11963.3 equals or exceeds 50 percent, the percentage calculated pursuant to paragraph (2) of  
14 subdivision (c) equals or exceeds 80 percent, and the charter school's pupil-teacher ratio is equal  
15 to or less than the pupil-teacher ratio of the largest unified school district in the county or  
16 counties in which the charter school operates as reported pursuant to paragraph (2) of subdivision  
17 (b) of Section 11963.3, the Advisory Commission on Charter Schools shall recommend to the  
18 State Board of Education approval of the request at 100 percent (i.e. full funding), unless there is  
19 a reasonable basis to recommend otherwise. The recommendation to the State Board shall  
20 include the reasons justifying a percentage that is greater than 70 percent and, if the  
21 recommended percentage is lower than the requested percentage, the reasons justifying the  
22 reduction and, if appropriate, describe how any deficiencies or problems may be addressed by  
23 the charter school.

24 (4) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of Section  
25 11963.3 is less than 40 percent, or the percentage calculated pursuant to paragraph (2) of  
26 subdivision (c) of Section 11963.3 is less than 60 percent, then the charter school's  
27 nonclassroom-based instruction is not substantially dedicated to the instructional benefit of the  
28 students, and the Advisory Commission on Charter Schools shall recommend that the State  
29 Board of Education deny the request, unless there is a reasonable basis to recommend otherwise.  
30 The recommendation to the State Board shall include the reasons justifying the denial and, if

1 appropriate, describe how any deficiencies or problems may be addressed by the charter school.  
2 Denial of a determination of funding request by the State Board of Education shall result in no  
3 funding being apportioned for average daily attendance identified by the charter school as being  
4 generated through nonclassroom-based instruction pursuant to Education Code section  
5 47634.2(c).

6 (c) The Advisory Commission on Charter Schools and/or the California Department of  
7 Education may ask the charter school to provide additional information in order to make possible  
8 a more detailed review or to develop a reasonable basis for a recommendation other than those  
9 prescribed in subdivisions (a) and (b). With the consent of the Superintendent of Public  
10 Instruction, the request for additional information shall be considered a reasonable inquiry to  
11 which the charter school must respond pursuant to Education Code section 47604.3.

12 (d) Prior to a recommendation by the Advisory Commission on Charter Schools (that a  
13 determination of funding request be denied or approved at a percentage lower than that  
14 requested) being forwarded to the State Board of Education, the affected charter school shall be  
15 given thirty (30) calendar days in which to amend its determination of funding request and/or to  
16 provide additional information in support of the request. Based upon consideration of the  
17 amended request or any additional information that may be provided, the Advisory Commission  
18 may modify its recommendation to the State Board.

19 (e) A reasonable basis for the Advisory Commission on Charter Schools to make a  
20 recommendation other than one that results from the criteria specified in subdivisions (a) and (b)  
21 may include, but not be limited to, the following: the information provided by the charter school  
22 pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of Section 11963.3,  
23 documented data regarding individual circumstances of the charter school (e.g., one-time  
24 expenses for facilities, acquisition of a school bus, acquisition and installation of computer  
25 hardware not related to the instructional program, special education charges levied on the charter  
26 school by a local educational agency, restricted state, federal, or private grants of funds awarded  
27 to the charter school that cannot expend for instructor salaries, or contracted instructional  
28 services other than those for special education), the size of the charter school, and how many  
29 years the charter school has been in operation. The Advisory Commission on Charter Schools  
30 shall give charter schools with less than a total of one hundred (100) units of prior year second

1 period average daily attendance or that are in their first year of operation serious consideration of  
2 full funding. For the purposes of paragraph (3) of subdivision (b), the information provided by  
3 the charter school pursuant to paragraph (2) of subdivision (b) of Section 11963.3 shall not be a  
4 reasonable basis for the Advisory Commission on Charter Schools to make a recommendation  
5 other than one that results from the criteria specified in paragraph (3) of subdivision (b).

6 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections  
7 47604.3 and 47634.2, Education Code.

8 **§ 11963.5. Submission and Action on Determination of Funding Requests Regarding**  
9 **Nonclassroom-Based Instruction.**

10 (a) Not more than 90 days following the receipt of a complete determination of funding  
11 request, the California Department of Education shall present the request and the  
12 recommendation of the Advisory Commission on Charter Schools to the State Board of  
13 Education in accordance with subdivision (a) of Section 11963.4. For 2002-03 and thereafter, a  
14 determination of funding request that will take effect within the fiscal year in which it is  
15 submitted must be submitted by a charter school not later than February 1. The State Board of  
16 Education may grant an exception to this limitation for good cause.

17 (b) If, during the effective period of a determination of funding, a charter school wishes to  
18 seek a higher or lower determination of funding, it shall do so by the filing of a new  
19 determination of funding request. During the effective period of a charter school's determination  
20 of funding, no more than one additional determination of funding request (which would replace  
21 the determination of funding then in effect) may be submitted by the charter school in the same  
22 fiscal year.

23 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Sections  
24 47604.3 and 47634.2, Education Code.

25 **§ 11963.6. Termination of a Determination of Funding Regarding Nonclassroom-Based**  
26 **Instruction.**

27 The State Board of Education may terminate a determination of funding if updated or  
28 additional information requested by the California Department of Education and/or the Advisory  
29 Commission on Charter Schools is not made available by a charter school within thirty (30)  
30 calendar days or if credible information from any source supports termination. If the latter is the

1 case, the charter schools shall be given thirty (30) calendar days prior to the termination of  
2 funding to provide additional information to support the school's determination of funding.  
3 NOTE: Authority cited: Sections 33031 and 47634.2, Education Code. Reference: Section  
4 47634.2, Education Code.

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6 **Note: The State Board of Education adopted these regulations at their June 2002 meeting. However, they are**  
7 **not the final version until they are reviewed and approved by the Office of Administrative Law (OAL).**